IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.769 OF 2004

Shri Dattatray R. Powar ... Petitioner

v/s

Sou. Radha S. Pal and anr. ... Respondents

Mr Siddhartha Karpe i/b Ms Varsha Palav and Mr Rupesh Nalawade for Petitioner.

Mr Amit Borkar for Respondent No.1.

CORAM : D.K. DESHMUKH J.

DATE : 22ND JUNE 2005.

P.C. :-

1. Rule, returnable forthwith. Heard finally by consent of parties.

2. The Appeal Court has declined to condone delay of 201 days in filing first appeal. The appeal was against a decree of declaration and permanent injunction. The declaration that is given is that the respondent - plaintiff has become absolute owner of the suit property. The Appeal Court has passed order holding that sufficient cause has not been shown by the petitioner for condonation of delay. I do not find any fault with the finding recorded by the Appeal Court that the cause shown by he petitioner cannot be termed exactly as sufficient. But, in my opinion, the fact that the appeal involves substantial proprietary rights of the petitioner, also considering the fact that the cross suit filed by the petitioner is pending in the Trial Court and above all, the willingness of the petitioner to pay substantial cost to the respondents to offset the prejudice that may be caused to the interest of respondents because of condonation of delay, in my opinion, the delay deserves to be condoned. In my opinion, following order would meet the ends of

justice,.

2. The order impugned in the petition is set aside. Miscellaneous Civil Application No.40 of 1999 is granted. Delay in filing first appeal by the petitioner is condoned. The Appeal Court is directed to consider and decide the first appeal on its own merits subject to payment of Rs.5,000/- as costs of this petition by the petitioner to the respondents within a period of four weeks from today. Payment of cost is condition precedent. Rule is made absolute accordingly.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.